

<b>I. REAL PARTY IN INTEREST .....</b>	<b>1</b>
<b>II. RELATED APPEALS AND INTERFERENCES .....</b>	<b>2</b>
<b>III. STATUS OF CLAIMS.....</b>	<b>2</b>
<b>IV. STATUS OF AMENDMENTS .....</b>	<b>2</b>
<b>V. SUMMARY OF CLAIMED SUBJECT MATTER.....</b>	<b>2</b>
<b>VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....</b>	<b>5</b>
<b>VII. THE ARGUMENT .....</b>	<b>5</b>
<b>VIII. CLAIMS APPENDIX .....</b>	<b>17</b>
<b>IX. EVIDENCE APPENDIX .....</b>	<b>22</b>
<b>X. RELATED PROCEEDINGS APPENIX.....</b>	<b>23</b>

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/730,330

Filing Date: 12/8/2003

Applicant(s): Thomas E. Creamer, Neil Katz, Victor S. Moore  
and Scott Winters

Entitled: OPERATING A CALL CENTER BASED UPON LINE  
INFORMATION DATABASE (LIDB) DATA

Examiner: Knowlin, Thjuan P.

Group Art Unit: 2614

Attorney Docket No.: BOC920030109US1 (1082-013U)

**TRANSMITTAL OF APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief in support of the Notice of Appeal filed October 27, 2008 in response to the non-final office action dated July 25, 2008 (the "Non-Final Office Action") in which Examiner re-opened prosecution subsequent to the entry of the Appeal Brief dated April 9, 2008. As this Appeal Brief has been timely filed within two months from the date of the Notice of Appeal, no extension of time under 37 C.F.R. § 1.136 is required. Notwithstanding, please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

Date: December 29, 2008

Respectfully submitted,

/Steven M. Greenberg/

---

Steven M. Greenberg

Registration No. 44,725

**Customer Number 46322**

Carey, Rodriguez, Greenberg & Paul, LLP

950 Peninsula Corporate Circle, Suite 3020

Boca Raton, FL 33487

Tel: (561) 922-3845

Facsimile: (561) 244-1062

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/730,330  
Filing Date: 12/8/2003  
Applicant(s): Thomas E. Creamer, Neil Katz, Victor S. Moore  
and Scott Winters  
Entitled: OPERATING A CALL CENTER BASED UPON LINE  
INFORMATION DATABASE (LIDB) DATA  
Examiner: Knowlin, Thjuan P.  
Group Art Unit: 2614  
Attorney Docket No.: BOC920030109US1 (1082-013U)

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed October 27, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1 through 17.

**I. REAL PARTY IN INTEREST**

This application is assigned to International Business Machines Corporation by assignment recorded on December 8, 2003, at Reel 014777, Frame 0038.

## **II. RELATED APPEALS AND INTERFERENCES**

Appellant is unaware of any related appeals and interferences.

## **III. STATUS OF CLAIMS**

Claims 1 through 17 are pending in this Application and have been four times rejected. It is from the multiple rejections of claims 1 through 17 that this Appeal is taken.

## **IV. STATUS OF AMENDMENTS**

The claims have not been amended subsequent to the imposition of the Final Office Action dated March 23, 2007.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1 is directed to a call center, independent claims 4 and 9 are directed to methods for processing a call in a call center using information stored in a LIDB, and independent claims 11 and 16 each are directed to a machine readable storage having stored thereon a computer program for processing a call in a call center using information stored in a LIDB in a PSTN.

In accordance with the Appellants' invention, a call center can be operably configured to retrieve a key into a customer information database from an LIDB disposed within a PSTN. In accordance with the Appellants' invention, a call center (Figure 2, Element 290) can be coupled to a gateway node (Figure 2, Element 250), between a PSTN (Figure 2, Element 200) and a data communications network (Figure 2, Element 270). The LIDB (Figure 2, Element 260) can be disposed within the PSTN and can be configured to store a key into a customer record stored

within an enterprise data driven application coupled to the call center (Par. [0011], lines 1-5). In this way, when an incoming call is processed in the PSTN to connect to the call center, the key stored within the LIDB can be delivered to the call center through the gateway node with which a customer record can be retrieved for the incoming call (Par. [0011], lines 9-14).

With specific reference to claim 1, a call center can include at least one phone handset coupled to a gateway to a PSTN, (Par. [0021]) an enterprise application associated with said at least one handset (Par. [0017]) and at least one data terminal coupled to said enterprise application and disposed in proximity to each of said at least one handset (Figure 2, Element 290), a database of caller information coupled to said enterprise application, each record in said database having a configuration for location based upon a searching key, (Par. [0017]) at least one LIDB disposed in said PSTN and configured to store individual searching keys, (Par. [0017]) each of said individual searching keys having an association with a corresponding subscriber to said PSTN, a gateway node communicatively linked both to said PSTN and said enterprise application (Par. [0017]), and a query interface to said enterprise application programmed to select records in said database of caller information based upon an individual searching key received from said LIDB through said gateway node. (Par. [0017])

With specific reference to claim 4, a method for processing a call in a call center using information stored in a LIDB can include, for selected ones of subscribers to the PSTN, storing within subscriber records in the LIDB a searching key into an enterprise application disposed externally to the PSTN (Par. [0020]), and during an attempt to establish a call between a subscriber to the PSTN and the call center (Figure 3, Element 310), retrieving from the LIDB a

searching key corresponding to the subscriber (Figure 3, Element 330) and forwarding said searching key to said enterprise application for use in retrieving call information stored externally to the PSTN. (Figure 3, Elements 330 to 350)

With specific reference to claim 9, a method for processing a call in a call center using information stored in a LIDB can include, for selected ones of subscribers to the PSTN, storing within subscriber records in the LIDB a searching key into an enterprise application disposed externally to the PSTN (Par. [0020]) and, during an attempt to establish a call between a subscriber to the PSTN and the call center (Figure 3, Element 310), retrieving from the LIDB a searching key corresponding to the subscriber (Figure 3, Element 330) and forwarding said searching key to said enterprise application for use in retrieving call information stored externally to the PSTN. (Figure 3, Elements 330 to 350).

With specific reference to claim 11, a machine readable storage having stored thereon a computer program for processing a call in a call center using information stored in a LIDB can include a routine set of instructions which when executed by the machine cause the machine to retrieving a searching key from the LIDB associated with the call (Figure 3, Element 330), query an enterprise application based upon said retrieved searching key to retrieve caller data (Figure 3, Element 340), and present the caller data to a call center operator processing the call. (Figure 3, Element 350)

With specific reference to claim 16, a machine readable storage having stored thereon a computer program for processing a call in a call center using information stored in a LIDB in a

PSTN can include a routine set of instructions which when executed by the machine cause the machine to, for selected ones of subscribers to the PSTN, store within subscriber records in the LIDB a searching key into an enterprise application disposed externally to the PSTN (Par. [0020]), and, during an attempt to establish a call between a subscriber to the PSTN and the call center, retrieve from the LIDB a searching key corresponding to the subscriber (Figure 3, Element 330) and forwarding said searching key to said enterprise application for use in retrieving call information stored externally to the PSTN (Figure 3, Elements 340 and 350).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. The drawings do not require correction under 37 C.F.R. § 1.83(a).
2. Claims 1 through 3 are not indefinite under 35 U.S.C. § 112, Second Paragraph.
3. Claims 1, 4, 5, 8 through 12, 15 through 17 are not anticipated by United States Patent No. 5,987,116 to Petrunka et al. (Petrunka).
4. Claims 4, 8, 9, 11, 15 and 16 are not anticipated by United States Patent No. 7,209,549 to Reynolds et al. (Reynolds).
5. Claims 2, 3, 6, 7, 13 and 14 are not unpatentable under 35 U.S.C. § 103(a) over Petrunka in view of U.S. Patent Application Publication No. US 2004/0264673 by Novack.

## **VII. THE ARGUMENT**

### **THE OBJECTIONS TO THE DRAWINGS**

On page 3 of the Non-Final Office Action, Examiner objected to Appellants' drawings for having not expressly shown all claim limitations displayed within a call center. Specifically, Examiner stated,



The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in regards to claim 1, the "call center comprising: at least one phone handset... an enterprise application ... a database of caller information ... at least one line information database (LIDS) disposed in said PSTN... a gateway node... and a query interface..." must be shown or the feature(s) canceled from the claim(s). According to the claim's language, all the above limitations are comprised within the call center, however, the drawings do not show the call center to comprise any component.

Appellants observe, however, that with respect to claim 1 to which Examiner refers, there are six recited claim elements: (1) a phone handset; (2) an enterprise application; (3) a database of caller information; (4) a LIDB; (5) a gateway node; and (6) a query interface. All six features are clearly shown in Figures 1 and 2. Examiner appears to object to the term "call center" that is not found within a limitation in claim 1, but in the preamble. As set forth in M.P.E.P. 2111.02, a preamble generally is not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention.<sup>1</sup> Consequently, preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant.<sup>2</sup> Accordingly, Appellants drawings have not run afoul of 37 C.F.R. § 1.83(a).

#### **THE REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

On page 4 of the Non-Final Office Action, Examiner argues that claims 1 through 3 are indefinite because the recited "call center" in the preamble of claim 1 does not, in the view of Examiner, include the recited limitations. Specifically, Examiner stated,

Claim 1 recites "A call center comprising: at least one phone handset... an enterprise application ... a database of caller information ... at least one line information database (LIDS) disposed in said PSTN ... a gateway node... and a query interface..." However, the "call center" does not comprise these features. The "call center" may interact with, use, or connect to one or more of these features, but the "call center", itself, does not comprise either of these features.

---

<sup>1</sup> Catalina Mktg. Int'l v. Coolsavings.com, Inc., 289 F.3d 801, 808-09 (Fed. Cir. 2002).

<sup>2</sup> Id.

There are two separate requirements set forth in 35 U.S.C. § 112, second paragraph. As described in M.P.E.P. 2171, (A) the claims must set forth the subject matter that applicants regard as their invention; and (B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant. The first requirement is a subjective one because it is dependent on what the applicants for a patent regard as their invention. The second requirement is an objective one because it is not dependent on the views of applicant or any particular individual, but is evaluated in the context of whether the claim is definite - i.e., whether the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art.

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent.<sup>3</sup> As such, if the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement, a rejection of the claim under 35 U.S.C. 112, second paragraph, would be appropriate.<sup>4</sup> However, if the language used by applicant satisfies the statutory requirements of 35 U.S.C. 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. 112, second paragraph, rather, the examiner should suggest improved language to the applicant.<sup>5</sup>

---

<sup>3</sup> See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000).

<sup>4</sup> See *Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470, 28 USPQ2d 1190, 1195 (Fed. Cir. 1993)

<sup>5</sup> M.P.E.P. 2173.02

Importantly, breadth of a claim is not to be equated with indefiniteness.<sup>6</sup> Rather, if the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.<sup>7</sup> Applying the law to claim 1, Examiner has not indicated how a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement. In fact, Examiner has not alleged that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement. Rather, Examiner alleges only that in Examiner's opinion, the recited claim limitations somehow cannot be part of a call center. Examiner's opinion, in this regard, does not comport with the definiteness requirement of 35 U.S.C. § 112, Second Paragraph whose requirements are clear: If the language of the claim is such that a person of ordinary skill in the art could interpret the metes and bounds of the claim so as to understand how to avoid infringement, a rejection of the claim under 35 U.S.C. 112, second paragraph, is NOT appropriate.

#### **THE REJECTIONS UNDER 35 U.S.C. § 102(B)**

Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a **proper construction of the claims**. ... The second step in the analyses requires a **comparison of the properly construed claim to the prior art**.<sup>8</sup> During patent examination, the pending claims must be “given their broadest reasonable interpretation

---

<sup>6</sup> *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971)

<sup>7</sup> M.P.E.P. 2173.04

<sup>8</sup> *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

consistent with the specification,”<sup>9</sup> and the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.<sup>10</sup> Therefore, the Examiner must (i) identify the individual elements of the claims and properly construe these individual elements,<sup>11</sup> and (ii) identify corresponding elements disclosed in the allegedly anticipating reference and compare these allegedly corresponding elements to the individual elements of the claims.<sup>12</sup> This burden has not been met.

On pages 5 and 6 of the Non-Final Office Action, Examiner argues that Petrunka teaches a line information database (LIDB) disposed in the PSTN and configured to store individual searching keys, and further that each of the individual searching keys has an association with a corresponding subscriber to the PSTN. Specifically, Examiner argued,

at least one line information database (LIDS) (See Fig. 1 and LIDS 1140) disposed in said PSTN and configured to store individual searching keys (e.g., language preference) (See col. 4 lines 43-51), each of said individual searching keys having an association with a corresponding subscriber to said PSTN

Thus, Examiner refers to column 4, lines 43 through 51 as the sole support for the argument that Petrunka teaches a LIDB configured to store individual searching keys, each of the keys having an association with a corresponding subscriber. For the convenience of the Honorable Board, the entirety of column 4, lines 43 through 51 of Petrunka is reproduced herein as follows:

Switch 1220 routes customer 1200's call to NCC 1100 through the PSTN. HLS 1110 receives the call and sends a query to LIDB 1140 using a Common Channel Signaling number 7 (CCS7) truck to retrieve data segments corresponding to customer 1200's calling telephone number [step 3020]. **The data segments include, for example, a language preference of the DN owner, i.e., the**

<sup>9</sup> In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007) (“[T]he PTO must give claims their broadest reasonable construction consistent with the specification. Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.”); In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

<sup>10</sup> In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)

<sup>11</sup> See also, Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, “what is the invention claimed?” since “[c]laim interpretation, . . . will normally control the remainder of the decisional process”); see Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

<sup>12</sup> Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

customer. HLS 1110 suspends call processing until LIDB 1140 responds with the desired data segments.

**At the outset, Appellants observe that Examiner has expressly construed the critical claim term "searching key" as "language preference".**

In this regard, the term "searching key" as it is well-known, means "A data item, or the value of a data item, that is used in carrying out a search."<sup>13</sup> Appellants' of the term "searching key" is entirely consistent with the ordinary meaning of searching key as evidenced by paragraph [0009] of Appellants' published specification in which Appellants stated, "[A] query interface to the enterprise application can be programmed to select records in the database of caller information based upon an individual searching key received from the LIDB through the gateway node." As set forth in M.P.E.P. 2111, "During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Specifically, the Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard.<sup>14</sup> Examiner's improper claim construction of "searching key" as "language preference" exceeds the legal standard for claim construction during examination and inhibits Examiner's ability to properly compare the cited art to Appellants' claims.

---

<sup>13</sup> See e.g. Answers.com < <http://www.answers.com/topic/search-key>>; See also, <<http://www.computerhope.com/jargon/s/searkey.htm>> (The string that is being used as term being searched for. Commonly, when text is sent from a program to the script or search function, additional text is attached to help the script or program understand the data.)

<sup>14</sup> The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

Examiner has similarly erred in construing the critical claim term "enterprise application". Enterprise application as it is well-known in the art, refers to application software that performs business functions such as accounting, production scheduling, customer information management, bank account maintenance, etc.<sup>15</sup> An enterprise application is frequently hosted on servers and simultaneously provides services to a large number of users, typically over a computer network.<sup>16</sup> Appellants' use of the term "enterprise application" is entirely consistent with the well-known meaning of "enterprise application" as evidenced by paragraph [0009] of Appellants' published specification in which Appellants stated, "[T]he enterprise application can include a customer relationship management application."

**Examiner, however, expressly construes "enterprise application" to mean "automatic call distributor".** An automatic call distributor (ACD) is not an enterprise application. Rather, as the skilled artisan will recognize, and as defined in Petrunka, an ACD is a server that routes inbound calls to different agents. Specifically, as set forth in column 1, lines 16 through 22 of Petrunka,

Many businesses use agents or operators to service customers by telephone. These businesses often employ several agents connected to an Automatic Call Distribution (ACD) system, such as a Meridians.RTM. ACD manufactured by Northern Telecom, Ltd., to handle multiple calls simultaneously. The call center technology distributes the calls (usually dialed with an 800 number) to the agents.

Thus, as was the case with "searching keys", Examiner again has misconstrued a critical claim term in contravention of M.P.E.P. 2111 and the holding of the Federal Circuit in Phillips v. AWH Corp.

---

<sup>15</sup> See e.g., Wikipedia <[http://en.wikipedia.org/wiki/Enterprise\\_software#Enterprise-level\\_application](http://en.wikipedia.org/wiki/Enterprise_software#Enterprise-level_application)>.

<sup>16</sup> Id.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.<sup>17</sup> Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.<sup>18</sup> Absence from an allegedly anticipating prior art reference of any claimed element negates anticipation.<sup>19</sup> To the extent that Examiner has misconstrued the critical claim elements "searching keys" and "enterprise application", it follows that Examiner has failed to locate within Petrunka all claimed elements of claims 1, 4, 9, 11 and 16. Thus, Examiner's failure in locating within Petrunka all claimed elements of claims 1, 4, 9, 11 and 16 necessarily negates anticipation thereof.

#### **THE REJECTIONS UNDER 35 U.S.C. § 102(E)**

On page 8 of the Non-Final Office Action, Examiner argues that Reynolds like Petrunka also discloses all claimed limitations present in claims 4, 9, 11 and 16. Specifically, Examiner argues,

In regards to claims 4 and 11, Reynolds discloses a method and machine readable storage having stored thereon a computer program for processing a call (e.g., call from calling telephone station 112)) in a call center (See Fig. 2 and call centers 176, 178) using information (e.g., language preference indicator) stored in a line information database (LIDS) (See Fig. 2 and LIDS 150), the method comprising the steps of: retrieving a searching key (e.g., preferred language) from the LIDS associated with the call (See col. 4 lines 31-39); querying an enterprise application (See Fig. 2 and SCP 140) based upon said retrieved searching key to retrieve caller data (e.g., information pertaining to calling telephone station 112) (See col. 4 lines 18-30); and, presenting said caller data to a call center operator (e.g., destination/operator) (See Abstract and col. 6 lines 36-49).

---

<sup>17</sup> *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) ("To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently"), *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

<sup>18</sup> See *In re Spada*, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); *Diversitech Corp. v. Century Steps Inc.*, 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

<sup>19</sup> *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986)(emphasis added).

Coincidentally, as was the case with Examiner's express claim construction of "searching keys" in Petrunka, Examiner commits identical reversible error in construing "searching keys" as language preference with respect to column 4, lines 31 through 39 of Reynolds.

**Examiner, however, commits new reversible error in construing "Enterprise Application" not as an ACD as was the case in Petrunka, but as a service control point (SCP) as stated explicitly by Examiner.** Examiner's inconsistent claim construction of "Enterprise Application" in one instance as an ACD and in another instance as an SCP confuses Appellants. Surely, Examiner realizes that an ACD and an SCP could not be more different. A simple Wikipedia lookup would have revealed to Examiner that an SCP is a standard component of an IN (Intelligent Networks) telephone system which is used to control the service.<sup>20</sup> Regardless, neither an SCP nor an ACD bears any relation to an Enterprise Application as properly construed. Examiner's improper claim construction of Enterprise Application as an SCP far exceeds the bounds of M.P.E.P.2111 and the law set forth in Phillips v. AWH Corp. and represents reversible error.

It goes without saying that Examiner's repeated failure to locate critical claim terms in both Petrunka and Reynolds renders impossible Examiner's attempt to meet the burden of establishing a prima facie case of anticipation under 35 U.S.C. § 102(e).

---

<sup>20</sup> See Wikipedia <[http://en.wikipedia.org/wiki/Service\\_Control\\_Point](http://en.wikipedia.org/wiki/Service_Control_Point)>.



### **THE REJECTIONS UNDER 35 U.S.C. § 103(A)**

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.<sup>21</sup> In so doing the Examiner must make the factual determinations set forth in Graham v. John Deere Co.<sup>22</sup> Thereafter, the Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability.<sup>23</sup> Furthermore, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness; however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.<sup>24</sup>

Of note, obviousness is a legal conclusion based on underlying factual determinations of four general types, all of which must be considered by the trier of fact: (1) the scope and content of the prior art; (2) the level of skill in the art; (3), the differences between the claimed subject matter and the prior art; and (4) any objective indicia of nonobviousness.<sup>25</sup> Applicants' position is that the Examiner has not properly established the underlying facts regarding (1) the scope and content of the prior art and (3) the differences between the claimed invention and the prior art given Examiner's failure to properly construe the critical claim terms "searching keys" and "enterprise application".

---

<sup>21</sup> See In re Fine, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

<sup>22</sup> 383 U.S. 1, 17 (1966).

<sup>23</sup> In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

<sup>24</sup> KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007)(quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

<sup>25</sup> See KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007); Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966); Continental Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264, 1270, 20 USPQ2d 1746, 1750-51 (Fed. Cir. 1991); Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1566-68, 1 USPQ2d 1593, 1594 (Fed. Cir. 1987).

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejections under 35 U.S.C. § 103(a) based upon the applied prior art are not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. § 103(a).

### CONCLUSION

To the extent the Examiner, having considered the foregoing arguments, persists and prepares an Examiner's Answer, Examiner is reminded of Examiner's responsibility under M.P.E.P. 1207.02(A)(1)(9)(c) to map every claim term in any of claims 1, 4, 9, 11 and 16 to each of the Petrunka and Reynolds references. In this regard, for the convenience of the Examiner the entirety of is provided herein:

For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims **feature by feature** with the prior art relied on in the rejection. **The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate.**

Specifically, Examiner must point out with particularity the precise teachings in each of Petrunka and Reynolds that map to the claimed elements (1) a line information database (LIDB) configured to store individual searching keys, each of said individual searching keys having an association with a corresponding subscriber to said PSTN; and (2) a query interface to an enterprise application programmed to select records in a database of caller information based upon an individual searching key received from the LIDB through the gateway node, while

applying the ordinary meaning of "searching keys" and "enterprise application" as a proper claim construction under M.P.E.P. 2111.01(I).<sup>26</sup>

Date: December 29, 2008

Respectfully submitted,

/Steven M. Greenberg/  
Steven M. Greenberg  
Registration No. 44,725  
Customer Number 46322  
Carey, Rodriguez, Greenberg & Paul, LLP  
950 Peninsula Corporate Circle, Suite 3020  
Boca Raton, FL 33487  
Tel: (561) 922-3845  
Facsimile: (561) 244-1062

---

<sup>26</sup> Although claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re American Academy of Science Tech Center, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004)

## **VIII. CLAIMS APPENDIX**

1. (Previously Amended) A call center comprising:
  - at least one phone handset coupled to a gateway to a public switched telephone network (PSTN);
  - an enterprise application associated with said at least one handset and at least one data terminal coupled to said enterprise application and disposed in proximity to each of said at least one handset;
  - a database of caller information coupled to said enterprise application, each record in said database having a configuration for location based upon a searching key;
  - at least one line information database (LIDB) disposed in said PSTN and configured to store individual searching keys, each of said individual searching keys having an association with a corresponding subscriber to said PSTN;
  - a gateway node communicatively linked both to said PSTN and said enterprise application; and,
  - a query interface to said enterprise application programmed to select records in said database of caller information based upon an individual searching key received from said LIDB through said gateway node.
2. (Original) The call center of claim 1, wherein each of said individual searching keys comprises a combination of a caller name and a caller address.
3. (Original) The call center of claim 1, wherein said enterprise application comprises a customer relationship management application.

4. (Original) A method for processing a call in a call center using information stored in a line information database (LIDB), the method comprising the steps of:

retrieving a searching key from the LIDB associated with the call;

querying an enterprise application based upon said retrieved searching key to retrieve caller data; and,

presenting said caller data to a call center operator processing the call.

5. (Original) The method of claim 4, wherein said retrieving step comprises the step of retrieving said searching key from a gateway node disposed intermediately between the LIDB in a public switched telephone network (PSTN) and said enterprise application.

6. (Original) The method of claim 5, wherein said retrieving step further comprises the steps of:

retrieving a combined name and address associated with the call from said gateway node;

and,

passing said combined name and address to said querying step as said retrieved searching key.

7. (Original) The method of claim 4, further comprising the step of presenting an incomplete set of caller data where said searching key cannot be retrieved from the LIDB.

8. (Original) The method of claim 4, further comprising the step of routing the call to a particular operator based upon said retrieved searching key.

9. (Original) In a public switched telephone network (PSTN), a method for processing a call in a call center using information stored in a line information database (LIDB), the method comprising the steps of:

for selected ones of subscribers to the PSTN, storing within subscriber records in the LIDB a searching key into an enterprise application disposed externally to the PSTN; and,

during an attempt to establish a call between a subscriber to the PSTN and the call center, retrieving from the LIDB a searching key corresponding to the subscriber and forwarding said searching key to said enterprise application for use in retrieving call information stored externally to the PSTN.

10. (Original) The method of claim 9, wherein said forwarding step comprises the step of forwarding said searching key to said enterprise application via a gateway node coupled both to said enterprise application and the PSTN.

11. (Original) A machine readable storage having stored thereon a computer program for processing a call in a call center using information stored in a line information database (LIDB), the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

retrieving a searching key from the LIDB associated with the call;

querying an enterprise application based upon said retrieved searching key to retrieve caller data; and,

presenting said caller data to a call center operator processing the call.

12. (Original) The machine readable storage of claim 11, wherein said retrieving step comprises the step of retrieving said searching key from a gateway node disposed intermediately between the LIDB in a public switched telephone network (PSTN) and said enterprise application.

13. (Original) The machine readable storage of claim 12, wherein said retrieving step further comprises the steps of:

retrieving a combined name and address associated with the call from said gateway node;  
and,

passing said combined name and address to said querying step as said retrieved searching key.

14. (Original) The machine readable storage of claim 11, further comprising the step of presenting an incomplete set of caller data where said searching key cannot be retrieved from the LIDB.

15. (Original) The machine readable storage of claim 11, further comprising the step of routing the call to a particular operator based upon said retrieved searching key.

16. (Original) A machine readable storage having stored thereon a computer program for processing a call in a call center using information stored in a line information database (LIDB)

in a public switched telephone network (PSTN), the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

for selected ones of subscribers to the PSTN, storing within subscriber records in the LIDB a searching key into an enterprise application disposed externally to the PSTN; and,

during an attempt to establish a call between a subscriber to the PSTN and the call center, retrieving from the LIDB a searching key corresponding to the subscriber and forwarding said searching key to said enterprise application for use in retrieving call information stored externally to the PSTN.

17. (Original) The machine readable storage of claim 16, wherein said forwarding step comprises the step of forwarding said searching key to said enterprise application via a gateway node coupled both to said enterprise application and the PSTN.



#### **IX. EVIDENCE APPENDIX**

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

#### **X. RELATED PROCEEDINGS APPENDIX**

Since Appellant is unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.